

## CALIFORNIA COASTAL COMMISSION

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# Fri 9a

Staff: BP-SD  
Staff Report: 12/18/03  
Hearing Date: 1/14-16/03

## STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Carlsbad

DECISION: Approval with Conditions

APPEAL NO.: A-6-CII-03-26

APPLICANT: Fred Kiko

PROJECT DESCRIPTION: Demolition of an existing single-family dwelling and construction of a two-story, 30-foot high, 6,358 sq. ft. single-family dwelling with basement, attached 700-sq. ft. garage/storage, roof deck, swimming pool and spa. In addition, the project includes the removal of an existing unpermitted wooden bulkhead, wooden return walls, and revetment rocks and construction of a new 50 ft. long, 18 ft. high vertical seawall on two 3,500 sq. ft. oceanfront lots proposed to be merged in one 7,000 sq. ft. lot.

PROJECT LOCATION: 2649 Ocean Street, Mello II, Carlsbad (San Diego County)  
APN 155-104-04

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### STAFF NOTES:

At its November 5, 2003 hearing, the Commission found Substantial Issue exists with respect to the grounds on which the appeal was filed. This report represents the de novo staff recommendation.

### Summary of Staff's Preliminary Recommendation:

Staff recommends the Commission approve the de novo permit with several special conditions. The proposed development raises several issues of concern related to need for shoreline protection and the safety of a proposed swimming pool, seaward of the proposed residence. The City's LCP allows seawalls to protect existing development; however, the LCP also requires that new development be sited so as to be safe for its economic life such that shoreline protection is not necessary. A coastal engineering analysis indicates that while the proposed residence can be sited without the need for the proposed vertical seawall, future storm runup on the subject site may eventually outflank the shoreline protection on the adjoining lots resulting in potential damage to existing accessory improvements and the residential structures on those lots. Thus, the seawall is proposed not to protect the proposed residence, but to protect the adjacent shoreline

protection from flanking that may lead to structural threat. However, the Commission's staff coastal engineer has concluded that based on information presented, the shoreline protection on the adjacent lots are not currently threatened. In addition, if the adjacent lots are threatened in the future, there are various alternatives, other than a seawall, that should be considered. Thus, staff is recommending that the seawall be deleted from the project as it is not necessary to protect existing threatened structures at either the subject site or the adjacent sites, and there are other alternatives available that do not involve the construction of a seawall that can be pursued to address any flanking concerns that may occur in the future.

Additionally, staff is recommending that conditions be imposed to ensure that no bluff or shoreline protective device(s) will ever be constructed to protect the new development authorized by this permit (although a protective device may be necessary to address impacts on the immediately adjacent properties) and that all proposed accessory improvements (i.e., decks, walls, planters etc.) should be designed to be removed or relocated at such time that they are in danger from erosion. Based on the information submitted, staff has determined that the proposed swimming pool to be constructed seaward of the proposed residence would be subject to threat from wave run up in the future and as such, recommends that the pool be deleted from the proposal.

With these and the attached conditions that are typical of the Commission's approval of shorefronting development, the project can be found consistent with the certified LCP and Chapter 3 policies of the Coastal Act.

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SUBSTANTIVE FILE DOCUMENTS: Certified City of Carlsbad Local Coastal Program (LCP)/Mello II Segment; Carlsbad Coastal Development Permits CDP #96-19, CDP #97-36, CDP #99-53; Coastal Commission Coastal Development Permits 6-86-585, 6-92-107 & A-6-CII-01-20; Skelly Engineering, "Supplemental Information, Appeal #A-6-CII-03-026 (Kiko)", July 10, 2003 (letter to the California Coastal Commission); Skelly Engineering, "Response to California Coastal Commission Request for Additional Information, 2649 Ocean Street, Carlsbad," April 29, 2003 (letter to the California Coastal Commission); Skelly Engineering, "Response to California Coastal Commission Appeal Notice, 2649 Ocean Street, Carlsbad," March 14, 2003 (letter to the California Coastal Commission); Skelly Engineering, "Wave Action & Coastal Hazard Study, 2649 Ocean Street Carlsbad," May 24, 2002 (letter report to Mr. Fredrick Kiko; SANDAG 2002, "State of the Coast Report Spring 2002, Beach and Lagoon Mouth Monitoring Program" 44 pgs + Appendices; US Army Corps Of Engineers, 1991, "State of the Coast San Diego Region, CCSTWS-Main Report"; Wiegel, R., January 2002, "Seawalls, Seacliffs, Beachrock: What Beach Effects? Part I, Part 2, & Part 3"; Shore & Beach, Vol. 70, Nos. 1, 2, & 3; Hany Elwany, Ph.D., Coastal Environments, September 29, 2003. Letter Report to Mr. David Skelly "Independent Peer Review of the Coastal Engineering Reports for the Kiko Project, 2649 Ocean Street, Carlsbad, California."; Dall & Associates, December 8, 2003 "Finite Kiko Project Description, Coastal Commission De Novo Review of CDP A-6-CII-03-026"; Geotechnical Exploration, Inc., March 17, 2003 "Letter report to Frederick and Jessica Kiko, Bluff Edge Determination.";

Geotechnical Exploration, Inc., June 25, 2003 “Bluff edge determination, proposed Kiko residence, 2649 Ocean Street, Carlsbad; Geotechnical Exploration, Inc., July 31, 2002. “Bluff edge determination, proposed Kiko residence, 2649 Ocean Street, Carlsbad; Geotechnical Exploration, Inc., August 29, 2003. “Bluff edge determination, response to Coastal Commission request for additional data,”; Geotechnical Exploration, Inc., December 2, 2003 Letter Report to Frederick and Jessie Kiko, and to Dr. Roy J. Shlemon, “Geotechnical Exploration, Inc. Response and Actions Taken Based on Peer Review Briefing,” 7 pp., one exhibit (Skelly Engineering, July 10, 2003 letter report), plus Appendices “A,” 10 pp., “B,” 9 pp., “C,” annotated 10/28/(19)54 oblique aerial photograph, “D,” US C&GS Topographical Map, “Northward from San Marcos Valley [to South Oceanside],” 1887, (188)8, “E,” annotated NOAA/NOS-US Army Corps of Engineers/LAD Cooperative Shoreline Movement Study (map), Imperial Beach-San Pedro, CA, and “F,” 5 pp. Geotechnical Exploration, Inc., December 2, 2003. Letter Report to Frederick and Jessie Kiko. “Typographical Revision of 25 June 2003” letter report, “Bluff Edge Determination, Proposed Kiko Residence, 2649 Ocean Street, Carlsbad, California,”” 8 pp. plus four attachments, Appendix “A,” Carbon 14 Dating Results, “B,” oblique aerial photographs, 1928, 1949, 1957, 1960, and “C,” Stereo Pair Aerial Photographs, 1932 and 1946. Kelley & Associates, Environmental Sciences, Inc., June, 2003. “Report on Carlsbad soil-landform investigation, Kiko property, 2649 Ocean Street, Carlsbad, California. California Coastal Commission Appeal No. A-Cii-03-026 (Kiko), 9 pp. Kelley & Associates, Environmental Sciences, Inc., July, 2003, “Supplement to report on Carlsbad soil-landform investigation, Kiko property, 2649 Ocean Street, 5 pp. appendices. Kelley & Associates, Environmental Sciences, Inc., “Response to Peer Review by Roy J. Shlemon, Ph.D., December 8, 2003.” 4 pp. Roy J. Shlemon & Associates, Inc., November 26, 2003. “Peer Review, Geotechnical and Geomorphic Investigations, 2649 Ocean Street, Carlsbad, California, “ 13 pp. plus Appendix “A,” 2 pp. Skelly Engineering, March 14, 2003. Letter to California Coastal Commission, “Response to California Coastal Commission Request for Additional Information, 2649 Ocean Street, Carlsbad,” Skelly Engineering, April 29, 2003. Letter Report to Frederick Kiko, “Response to California Coastal Commission Appeal Notice,” 2649 Ocean Street, Carlsbad, 2 pp., Skelly Engineering, May 24, 2003. Letter Report, “Wave Action & Coastal Hazard Study, 2649 Ocean Street, Carlsbad.” 7 pp., Skelly Engineering, July 10, 2003. Letter Report to Lee McEachern and Bill Ponder, California Coastal Commission, “Supplemental Information Appeal #A-6-CII-03-026 (Kiko),” 4 pp. plus one exhibit (annotated Map 12a, California Department of Boating and Waterways, 1994 Shoreline Erosion Assessment and Atlas of the San Diego Region, Vol. II, Buena Vista Lagoon-South Carlsbad, Mile 21.0-24.0). Skelly Engineering, September 10, 2003. “Appeal #A-6-CII-03-016 (Kiko), Additional Supplemental Information,” 14 pp. and Exhibits 1 (Declaration of Cindy Blair and Phil Palisoul, with site plan), 2 (Ocean Street Condominiums, 2653-55 Ocean Street, Carlsbad, CA, “Retaining Wall and Stairway Site Plan & Elevations,” by C. J. Randle, PE, rev. 8/26/98), 3 (oblique photograph looking N toward bulkhead and slope of Kiko property, 4 (revised seawall plans [superseded by December, 2003 finite project seawall plan in Wolf-Design.)

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I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

**MOTION:**        *I move that the Commission approve Coastal Development Permit No. A-6-CII-03-26 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified Local Coastal Program and with the public access and recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Revised Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final site, building and elevation plans for the permitted development that have been approved by the City of Carlsbad. Said plans shall be in substantial conformance with the plans submitted by the applicant dated received December 9, 2003 by Kalber Architecture, but shall be revised as follows:

- a. Elimination of the proposed seawall, the backfill behind the seawall and the swimming pool.

- b. Any proposed accessory improvements (i.e., decks, patios, walls, etc.) located seaward of the residence in the geologic setback area on the site shall be detailed and drawn to scale on the final approved site plan. Such improvements shall be at grade or capable of being removed without significant landform alteration.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the applicant acknowledges and agrees; (i) that the site may be subject to hazards from wave runoff, erosion and flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

3. Other Special Conditions of the Carlsbad Regular Coastal Permit. Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of Carlsbad pursuant to an authority other than the Coastal Act.

4. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

5. Future Development. This permit is only for the development described in coastal development permit No. A-6-CII-03-26. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources

Code Section 30610(a) shall not apply. Accordingly, any future improvements to the proposed single family residence, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and Title 14 California Code of Regulations section 13252(a)-(b), shall require an amendment to permit No. A-6-CII-03-26 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

6. Construction Schedule/Staging Areas/Access Corridors. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, detailed plans identifying the location of access corridors to the construction sites and staging areas, and a final construction schedule. Access shall only be via the identified access corridors. Said plans shall include the following criteria specified via written notes on the plan:

- a. Use of sandy beach and public parking areas outside the actual construction site, including on-street parking, for the interim storage of materials and equipment is prohibited.
- b. No work shall occur on the beach during the summer peak months (start of Memorial Day weekend through Labor day) of any year.
- c. Equipment used on the beach shall be removed from the beach at the end of each workday.

The permittee shall undertake development in accordance with the plans and construction schedule. Any proposed changes to the approved plans or construction schedule shall be reported to the Executive Director. No changes to the plans or schedule shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

7. Drainage Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and written approval of the Executive Director, a final drainage and runoff control plan, with supporting calculations, that has been approved by the City of Carlsbad. This plan shall include the following requirements:

- (a) Drainage from all roofs, parking areas, driveway area, and other impervious surfaces on the building pad shall be directed to toward the street to the maximum extent possible and through vegetative or other media filter devices effective at removing and/or mitigating contaminants such as petroleum hydrocarbons, heavy metals, and other particulates.
- (b) Any runoff directed to the beach shall be directed in a non-erosive manner and through landscaping or another filtering medium as stated above, prior to discharge

onto the beach. No energy dissipating structures shall be permitted on the beach seaward of the toe of bluff.

The permittee shall undertake development in accordance with the drainage plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

8. Revised Landscaping Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and written approval of the Executive Director, a final landscaping plan approved by the City of Carlsbad. Said plan shall include the following:

- a. Drought tolerant and native plant materials are required. No invasive species are permitted. All proposed landscaping and any improvements in the side yard setbacks shall be maintained at a height of three feet or lower to preserve views from the street toward the ocean; also, any gates or fencing across the side yard setback areas shall be see through/open.
- b. A planting schedule that indicates that the planting plan shall be implemented within 60 days of completion of residential construction.
- c. A written commitment by the applicant that all required plantings shall be maintained in good growing conditions, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape screening requirements.
- d. Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

The permittee shall undertake development in accordance with the approved landscape plans. Any proposed changes to the approved landscape plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

9. Waiving the Rights to Future Shoreline Protection. By acceptance of this Permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-6-CII-03-26 in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

10. Protection of Accessory Improvements. In the event that erosion or bluff failure threatens the accessory improvements (i.e., decks, retaining walls, patios, etc.), they shall be removed. The decks, retaining walls and patios are authorized to remain in place only until they are threatened by erosion or bluff failure. The approval of this permit shall not be construed as creating a right to shoreline protection under the City's LCP. Prior to removal of any threatened accessory improvements, the permittee shall obtain a coastal development permit for such removal unless the Executive Director determines that no permit is required.

11. Disposal of Export Material/Construction Debris. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify the location for the disposal of export material and construction debris. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successors in interest.

12. As-Built Plans. Within 60 days following completion of the project, the permittee shall submit as-built plans approved by the City of Carlsbad to be reviewed and approved in writing by the Executive Director documenting that the stringline provisions have been met and the residence and accessory structures have been constructed consistent with the Executive Director approved construction plans.

13. Condition Compliance. WITHIN SIXTY (60) DAYS OF COMMISSION ACTION OF THIS COASTAL DEVELOPMENT PERMIT APPLICATION, or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.



#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description/Permit History. The proposal includes demolition of an existing single-family dwelling and construction of a two-story, with basement, 30-foot high, 6,358 sq.ft. single-family dwelling and attached 700-sq.ft garage/storage on an oceanfronting and blufftop site within the Mello II segment of the Carlsbad Local Coastal Program. Also proposed is a swimming pool and spa and sun deck. In addition, the project includes the removal of an existing unpermitted wooden bulkhead, wooden return walls, and revetment rocks and construction of a new 50 ft. long, 18 ft. high vertical seawall on two 3,500 sq. ft. oceanfront lots proposed to be merged in one 7,000 sq. ft. lot (Exhibit 2). The basement level will not be visible from the street but will be open from the west (seaward) side of the structure. Approximately 1,278 cubic yards of cut grading is proposed to prepare the site for the improvements.

The site is located on the west side of Ocean Street, just north of Beech Street in the City of Carlsbad (Exhibit 1). The site consists of two narrow rectangular lots, each 3,500 square feet, proposed to be merged into one 7,000 sq. ft. lot. The site slopes downward from east to west (towards the beach, Exhibit 3). The eastern portion of the site, along Ocean Street, generally contains slopes of 0-25% for approximately the first 70 feet. From that point westward the site drops more steeply toward the beach. The site is currently developed with a single-family residence and the western slope contains mainly ice plant and other non-native plant species. There is no significant native vegetation on the site. An existing unpermitted wooden bulkhead (previously described as a “sandbox”) is located on the western property line approximately 6-10 ft. seaward of the toe of the bluff (Exhibit 3). Based on a review of Commission records and historical aerial photographs, staff notes that the wooden bulkhead and rock was constructed after the effective date of the Coastal Act between 1978 and 1983 and without the required coastal development permit. Potential prescriptive rights to public access may exist in the area under and inland of the bulkhead.

The applicant proposes to dispose of the wooden bulkhead offsite and outside the coastal zone. Special Condition #11 memorializes this proposal. The deck-terrace is proposed to extend no farther seaward than the nearest respective terrace-patio corners of the adjoining properties; see-through side yard gates are proposed along the Ocean Street frontage.

A vertical seawall is located on the adjacent lot to the south; a rock revetment is located on the adjacent lot to the north. The westerly edge of the seawall is proposed to be located at the toe of the coastal bluff along 39 feet of its length; 11 feet of its length curves seaward toward the southwest approximately 10 ft. to join the nearest edge of the existing vertical seawall on the adjacent property to the south. A 90-degree corner is proposed where the seawall meets the adjoining vertical seawall. Return walls, 10 and 15 feet in length, are proposed along the southerly and northerly property lines to further

protect against potential flanking erosion. The applicant is also proposing a lateral access dedication seaward of the seawall, maintenance and monitoring of the seawall, deposition of 81 cubic yards of suitable material on the beach and a beach sand mitigation fee of \$1,545.00 to mitigate the loss of the relatively small quantity of beach quality sand due to the proposed seawall over its 75-year economic life. Further details of the applicant's proposal are attached as Exhibit #5.

The site is zoned R-3 and is within the Beach Area Overlay Zone. It has a LCP designation of RH (Residential – High Density). Surrounding properties to the north and south are also zoned R-3 and also have a LCP designation of RH. The properties to the east of Ocean Street are zoned R-3 with a LCP designation of RMH (Residential – Medium to High density). Surrounding properties are developed with a variety of residential uses which include single- and multi-family structures.

The City approved a Coastal Development Permit (CDP), Special Use Permit (SUP) and Variance (V). A 20-foot front yard setback is required in the R-3 zone but a zero foot front yard setback was approved. Special Condition #3 advises that this permit has no effect on conditions imposed by the City of Carlsbad pursuant to an authority other than the Coastal Act. Other projects on the west side of Ocean Street have been approved with front yards reduced to zero feet because of the site topography.

The standard of review is consistency with the certified City of Carlsbad Local Coastal Program, Mello II segment and the public access policies of the Coastal Act.

2. Stringline. The proposed project is a single family dwelling on a oceanfronting site comprised of two lots. The certified LCP prohibits new development along the ocean from extending further seaward than a “stringline” drawn between adjacent sites. The goal of limiting new development from extending beyond the stringline is to restrict encroachment onto the shoreline and to preserve public views along the shoreline. Policy 7-12 of the Mello II LUP states:

#### Seaward of Ocean Street

New development on the seaward side of Ocean Street shall observe at a minimum, an ocean setback based on a “stringline” method of measurement. No enclosed portions of a structure shall be permitted further seaward than allowed by a line drawn between the adjacent structure to the north and south; no decks or other appurtenances shall be permitted further seaward than those allowed by a line drawn between those on the adjacent structures to the north and south. The policy shall be used on single family, “infill” parcels, and a greater ocean setback may be required for geologic reasons.

Additionally, in its approval of the project, the City cited the project's conformance with the blufftop development provisions of the Coastal Shoreline Development Overlay. The overlay is intended to provide land use regulations along the Carlsbad shoreline including beaches, bluffs and the land area immediately landward thereof. The purpose of the

overlay zone is to ensure that the public's interest in maintaining the shoreline as a unique recreational and scenic resource is adequately protected. The overlay also ensures public safety and public access will be assured and promotes avoidance of the adverse geologic and economic effects of bluff erosion. Section 21.204.050 of the Coastal Shoreline Development Overlay zone provides:

Uses permitted by the underlying zone map may be permitted on non-beach areas subject to granting of a coastal development permit for coastal shoreline development issued pursuant to the procedures of Chapter 21.201 of this title, unless specifically prohibited by policies or other applicable ordinances in the approved Carlsbad local coastal program. "Non beach areas" are defined as areas at elevations of ten feet or more above mean sea level (North American Datum, 1929). Permitted uses are subject to the following criteria:

A. Grading and Excavation. Grading and excavation shall be the minimum necessary to complete the proposed development consistent with the provisions of this zone and the following requirements:

- 1) ...Building sites shall be graded to direct surface water away from the top of the bluff, or, alternatively, drainage shall be handled in a manner satisfactory to the City which will prevent damage to the bluff by surface and percolating water..
- 2) No excavation, grading or deposit of natural materials shall be permitted on the beach or the face of the bluff except to the extent necessary to accomplish construction pursuant to this section....

B. New development fronting the ocean shall observe at a minimum, an ocean setback based on a "stringline" method of measurement. No enclosed portions of a structure shall be permitted further seaward than allowed by a line drawn between the adjacent structure to the north and south; no decks or other appurtenances shall be permitted further seaward than those allowed by a line drawn between those on the adjacent structures to the north and south. A greater ocean setback may be required for geologic reasons and if specified in the Local Coastal Program.

As noted, the project area is developed with a variety of residential uses on bluff top lots which include both single- and multi-family developments. The project site is along a coastal bluff with the street elevation of approximately +40-ft. Mean Sea Level (MSL) and the toe of the bluff elevation at approximately +12-ft. MSL. The Commission has interpreted the above cited stringline provisions of the LCP to require that the "stringline" be measured from the nearest point of adjacent structures immediately to the north and south of the proposed development (ref. CDP Nos. 6-90-25/Kunkel; 6-90-299/Rowe; 6-92-107/Phillips and 6-95-144/Bownes). Compliance with the stringline assures that new development will be sited consistent with existing similar development and not adversely impact public views or encroach on public use areas.

The nature and pattern of development in the area has been permitted through application of the stringline policies, some pre-coastal development, development approved by the Commission and, since 1997 when effective certification of the Carlsbad LCP occurred, development approved by the City. The Commission has found seawalls are not an accessory structure to be used for purposes of determining stringline and that the purpose of the stringline policies is to avoid need for seawalls and associated beach encroachment. As proposed, the extent of development seaward of the residence and supported by the new seawall is more extensive than that typically permitted through historic application of the stringline policies.

As redesigned and proposed, the siting of the home and accessory development seaward of the home, with the exception of the seawall, complies with the stringline policy because the structures extend no further seaward than those same kinds of structures on the adjoining lots. For example, as noted, the proposed deck-terrace is in line with the nearest respective terrace-patio corners of the adjoining properties.

Regarding the proposed grading of the site, the LCP requires grading and excavation to be the minimum necessary to complete the proposed development. Although the development involves construction of a home and a number of accessory improvements seaward of the home which result in approximately 1,268 cubic yards of grading, the proposal is similar to the pattern of development in the surrounding area that includes similar improvements (decks, patios, walls) on the slopes seaward of the homes. In several City and Commission permit actions in the project area (Blair/Palisoul, Sea Bisquit, CDP #6-86-585 (Grosse), CDP #6-92-107 (Phillips)), grading of the sites' slopes was approved to accommodate accessory development. With the exception of the swimming pool, the Commission can support the proposed improvements because they are consistent with the stringline and the prevailing pattern. However, as discussed in the succeeding section below, the Commission is requiring the pool to be deleted because it cannot be safely sited at its proposed location without the need for a seawall. Additionally, the proposed swimming pool will require substantial grading and landform alteration for its construction and potential removal, if threatened, which is inconsistent with Section 21.204.050 of the certified LCP.

The subject site is located in the Coastal Resource Protection Overlay Zone, which includes all Mello II properties and requires that for steep slope areas not containing endangered plant/animal species and/or coastal sage scrub or chaparral plant communities, development of slopes 25% or greater may be permitted subject to specific findings. Although grading is proposed on slopes steeper than 25%, no sensitive vegetation is present on the site. Therefore, the proposed project complies with all applicable requirements of the Coastal Resource Protection Overlay Zone and the above-cited LCP provisions.

As conditioned, the project is consistent with the prevailing pattern development, ocean (stringline) setbacks and proposed grading will not adversely affect coastal resources;

therefore, the Commission finds the proposed project is consistent with the cited provisions of the Mello II LCP.

3. Shoreline Development/Hazards. The Mello II LUP contains policies that address coastal erosion. Policy 4-1 provides:

(a) Development Along Shoreline

For all new development along the shoreline, including additions to existing development, a site specific geologic investigation and analysis similar to that required by the Coastal Commission's Geologic Stability and Bluff Top Guidelines shall be required; for permitted development, this report must demonstrate bluff stability for 75 years, or the expected lifetime of the structure, whichever is greater. Additionally, permitted development shall incorporate, where feasible, subdrainage systems to remove groundwater from the bluffs, and shall use drought-resistant vegetation in landscaping, as well as adhering to the standards of erosion control contained in the Carlsbad Master Drainage Plan. A waiver of public liability shall be required for any permitted development for which an assurance of structural stability cannot be provided.

Policy 4- b of the Coastal Shoreline Development Overlay provides:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion), and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply... (emphasis added)

Additionally, Section 21.204.110 of the Coastal Shoreline Development Overlay zone requires that new development must be sited appropriately with respect to hazards.

Geotechnical reports shall be submitted to the planning director as part of an application for plan approval... The document should be based on an onsite inspection in addition to a review of the general character of the area and it shall contain a certification that the development as proposed will have no adverse effect on the stability of the bluff and will not endanger life or property, and professional opinions stating the following:

1. The area covered in the report is sufficient to demonstrate the geotechnical hazards of the site consistent with the geologic, seismic, hydrologic and soil conditions at the site;
2. The extent of potential damage that might be incurred by the development during all foreseeable normal and unusual conditions, including ground saturation and shaking caused by the maximum credible earthquake...

[...]

14. The effect the project could have on the stability of the bluff.

15. Mitigating measures and alternative solutions for any potential impact.

The report shall also express a professional opinion as to whether the project can be designed or located so that it will neither be subject to nor contribute to significant geologic instability throughout the lifespan of the project. The report shall use a currently acceptable engineering stability analysis method, shall describe the degree of uncertainty of analytical results due to assumptions and unknowns, and at a minimum, shall cover an area from the toe of the bluff inland to a line described on the bluff top by the intersection of a plane inclined at a twenty-degree angle from horizontal passing through the toe of the bluff or fifty feet inland from the bluff edge, whichever is greater. The degree of analysis required shall be appropriate to the degree of potential risk presented by the site and the proposed project. If the report does not conclude that the project can be designed and the site be found to be geologically stable, no coastal shoreline development permit shall be issued.

Shoreline protective structures, consisting of rock revetments, vertical seawalls, and an occasional wooden bulkhead/wall, as at the site, are located continuously along this segment of the Carlsbad shoreline. However, the legality of the majority of the existing shoreline protection has not been verified. Rock revetments are located along eight homes and the Army-Navy School to the north (upcoast) from the iceplant-covered wooden bulkhead at the Kiko property. There is a continuous sequence of vertical seawalls and rock revetments along eighteen homes and lodging facilities to the south (downcoast) of the Kiko property. With the exception of the seawall immediately adjacent to the south, the alignment of the existing vertical shoreline protection further south is for the most part inland of the proposed alignment and at the toe of the bluff.

Currently, the beach in front of the subject site is wider than it has been in the past and it was recently widened with sand from a regional sand replenishment project. The site's existing timber bulkhead with return walls is located between a downcoast vertical seawall and an upcoast rock revetment. According to the applicant, the bulkhead was reportedly constructed in response to emergency conditions associated with 1978 storms, but was apparently not engineered or constructed to meet current standards for shoreline protective structures relating to storm wave design height, runup and maximum wave loading (to avoid overtopping), foundation depth, return walls, construction materials, and seismic loading. The applicant contends the proposed vertical seawall is a "replacement shoreline protective structure". However, Commission staff note the existing wooden bulkhead on the beach fronting this site is unpermitted and, therefore, should not be used as justification for a "replacement" structure.

The proposed residence would be located approximately 70 feet landward of the existing toe of the bluff with accessory improvements proposed between the home and the proposed seawall (Exhibit #2). Although the applicant's coastal engineering study

indicates the home itself will be safe from wave erosion without the need for a seawall, the study indicates the existing bulkhead is in disrepair and eventually will fail, resulting in the site and adjacent properties experiencing erosion from wave action. The study recommends the replacement of the bulkhead with the proposed vertical seawall to insure against damage from any future shoreline erosion to the adjacent properties resulting from flanking of the existing shore protection.

The applicant is proposing removal of the existing unpermitted wooden bulkhead in conjunction with reconstruction of a new seawall, however, neither the existing unpermitted wall nor the new proposed wall are necessary pursuant to Section 30235 and applicable LCP policies. The applicant is proposing to remove the unpermitted wall; however, in the event that the wall is not removed, this permit in no ways authorizes its retention in any way.

The Commission has typically found in Section 30235 of the Coastal Act (and as mirrored above in the Carlsbad LCP in Policy 4- b and Section 21.204.110) that while shoreline protection can be approved to protect existing development, new development should not be dependent on a seawall. Both the Commission and the applicant agree that, in this case, the new home can be sited without the need for a seawall. The Commission has interpreted the above sections taken together to mean that while shoreline protective devices are permissible to protect existing primary structures like an existing home, new development must be sited so as to not require construction of a shoreline protective device. The Commission has found that shoreline protective devices may have an adverse effect on the shoreline sand supply and the stability of the bluff system and are only appropriate when protecting existing structures when such property is threatened by erosion and wave attack. Additionally, in the following “Public Access” section of this report, the Commission finds that the existing unpermitted bulkhead has adverse impacts to public access both on-site and off-site that require its removal.

The applicant’s coastal engineer has found that storm conditions similar to those in 1982-83 or 1997-98 would overtop the wooden wall, likely result in its failure, and result in shoreline retreat back to the toe of the coastal bluff. According to the applicant’s coastal engineer, failure of the wooden wall would expose the adjacent retaining wall (not an engineered seawall return wall) along the adjacent downcoast property to undercutting and failure, which in turn would threaten the seawall itself with flanking and potential destruction. Similarly, failure of the wooden wall would expose the adjacent rock revetment along the adjacent upcoast property to undercutting, settlement, and structural failure. According to the applicant’s coastal engineer, although the revetment is an engineered structure with a stable foundation, this does not assure protection for the upcoast revetment against flanking erosion or settlement associated with major storm-high tide events.

In response to concerns raised by Commission staff, the applicant analyzed the need for the seawall to address the concern that the adjacent properties will be subject to threat from erosion due to flanking of the protection that exists on those sites. The analyses found that the “no project”, “upgrading the existing wooden bulkhead” and “Long-term

beach nourishment and maintenance of the existing wooden bulkhead” alternatives were not viable and instead proposes a preferred alternative which is the proposed vertical seawall. Upon review of all the information, the Commission’s coastal engineer and geologist concur that the proposed home is sited such that it will be safe for its 75-year economic life without shoreline protection or the existing unpermitted bulkhead. However, no information has been provided that documents any immediate threat to the adjoining seawall or revetment seawall without the proposed seawall or the existing unpermitted seawall. Furthermore, if the adjoining seawall structures are threatened in the future, there are alternatives other than the proposed seawall that could protect the adjacent structures from flanking. For example, end walls or return walls could be constructed on the adjoining sites to protect existing development on those sites, the existing bulkhead could be rebuilt or relocated further inland, small erosion pockets inland of the revetment could be filled, etc. (See Memorandum attached as Exhibit #9).

The proposal also includes the construction of a pool excavated into the slope seaward of the home (the bottom elevation of the pool is +18 MSL which is the same elevation as the top of the proposed seawall). While the proposed residence is safe from wave uprush, according to the Commission’s coastal engineer, if the new proposed seawall is deleted from the proposed project, the proposed pool may be damaged by wave uprush and erosion at some point in the future; however, possibly not for decades. While the threat may not occur for many years, the Commission is concerned that if the pool is threatened in the future, a seawall or some other form of shoreline protection would be proposed to protect it. The LCP allows accessory structures seaward of homes on coastal bluff sites only when they do not require landform alteration and significant grading. In this case the excavation of the pool requires significant grading because of its size and depth. Unlike other typical accessory improvements, which if threatened can be easily removed, the proposed swimming pool is permanently excavated into the slope seaward of the home. Removal in the future would require substantial alteration and potential impacts to the slope, inconsistent with LCP policies. For this reason, many certified LCPs have the same setback requirements for principle residential structures applicable to swimming pools. Swimming pools are not typically treated as the type of accessory improvement that can be easily removed as an alternative to protection. Although the Carlsbad LCP does not make that specific distinction, the Commission finds a swimming pool on the portion of the bluff seaward of the residence is inconsistent with the policies which call for minimal grading on non-beach areas and which require that new development should be sited so as not to require shoreline protection. In this particular case, based on the analysis provided by the applicant’s consultants, the proposed swimming pool will be subject to threat in the future and as such, the Commission is requiring that the swimming pool be deleted from the project.

Special Condition #1 requires final plans documenting the removal of the seawall and the swimming pool from the proposed project. In addition, although the applicant asserts that the proposed development can be constructed safely despite ongoing erosion and wave runup, the bluffs along the Carlsbad shoreline are known to be hazardous and unpredictable. Given that the applicant has chosen to construct a residence despite these risks, the applicant must assume the risks. Accordingly, Special Condition #2 requires



the applicant to acknowledge the risks and indemnify the Commission against claims for damages that may occur as a result of its approval of this permit. Special Condition #4 requires the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. In addition, since the applicant has assured the Commission that the proposed residence can be constructed without requiring shoreline protection in the future, Special Condition #9 requires the applicant to waive all rights and claims that may exist under the City's LCP to obtain a permit to build a protective device to protect the development authorized in this permit. Based on the analysis provided by the applicant's consultants (and accepted by the Commission's staff coastal engineer and geologist), the proposed home will be safe for 75-100 years without the need for protection. Since the LCP requires new development to be sited such that it is safe for at least 75 years and only allows shoreline protection to protect existing development, only with this waiver can the project be found to be consistent with the cited provisions of the LCP. The Commission notes that the accessory improvements on the subject site are considered ephemeral because in and of themselves they are not assured protection by the LCP. Special Condition #10 advises the applicant that the proposed accessory improvements seaward of the home (i.e., decks, walls, planters etc.) are permitted to remain in place until threatened by erosion of bluff failure. Once threatened, they are required to be removed.

Based on the above, the Commission finds the required findings are made to ensure the proposed development is appropriately sited so as to be safe from coastal erosion without requiring future additional shoreline protection. As conditioned, the proposed seawall and swimming pool are deleted, the applicant assumes the risk of developing in a hazardous location, and that the applicant recognizes that a seawall is not permitted to protect the new home or its associated improvements; thus, the Commission finds the proposed project conforms to the above provisions of the certified Carlsbad LCP.

4. Public Access. The public access and recreation policies of the Coastal Act are applicable because the proposed development is located between the sea and the first public road. Section 30604(c) requires that a specific access finding be made in the case of proposed development that is so located. Many policies of the Coastal Act address the provision, protection and enhancement of public access to and along the shoreline, in particular, Sections 30210, 30211, 30212 and 30223. These policies address maintaining the public's ability to reach and enjoy the water, preventing overcrowding by providing adequate recreational area, and protecting suitable upland recreational sites.

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

### Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 21.204.070(A)1) of the Coastal Shoreline Development Overlay states:

If the certified local coastal program or the permit process produces evidence of historic public use on a development site located in the coastal zone, development shall be required to meet all of the following requirements:

A. Siting and Design of Development.

1. Development shall be sited and designed in a manner which does not interfere or diminish the potential public rights based on historic public use. Mechanisms for guaranteeing the continued public use of the site shall be required in accordance with Section 21.204.080; or
2. Development may be sited in the area of potential historic public use provided that an area of equivalent public access has been provided in the immediate vicinity of the development site which will accommodate the same type and intensity of use as previously may have existed on the development site. An equivalent access area shall provide access of comparable site, and type of use. Mechanisms for guaranteeing the continued public use of the area shall be required in accordance with Section 21.204.080.

Vertical access is available approximately 400-feet north of the site and lateral access is currently available seaward of the unpermitted bulkhead on the sandy beach to the west of the site. Section 21.204.070(A)1 of the Coastal Shoreline Development Overlay requires that "Development shall be sited and designed in a manner which does not interfere or diminish the potential public rights based on historic public use...." The LCP requires that a seawall's effect on public access be evaluated. As indicated in the preceding section, the Commission finds it is feasible to construct the project without the need for a seawall; thus, no adverse impacts to public access are anticipated from the proposed development, as conditioned.

However, the existing wooden bulkhead has significant public access impacts based on its location on the beach approximately 22-feet seaward of the toe of the coastal bluff. Although apparently on private property at this location (it is located on the western property line), this is sandy beach that has been recently nourished and has been historically used by the public for access and recreation. This bulkhead not only physically displaces available sandy beach area but would also deflect wave energy when struck by waves which promotes beach loss from scouring. Equally as important, this seawall has been used as a reference point for dictating the alignment of seawalls up and down the coast in the project area. For example, the adjoining vertical wall to the south

has an alignment that encroaches significantly more seaward on its northern end than on its southern end. It was designed to be consistent with a stringline drawn between the subject lot to the north and the existing vertical seawall on the adjoining lot to the south. However, it juts dramatically seaward in a diagonal fashion towards the subject bulkhead as a result of the bulkhead being located much further seaward than the vertical wall to the south.

Unfortunately, since the bulkhead has not been permitted, to use it as a reference point for the seawall alignment on other up- and downcoast developments has resulted in shoreline protection being sited further out on the beach than necessary. To use it as a reference point for the seawalls that are north of the site would compound and exacerbate the problem. The end result is that numerous properties up and down the coast line could have shoreline protection built much further seaward than necessary with the corresponding adverse impacts to public access. The applicant has proposed to remove the bulkhead with this application and replace it with the proposed vertical seawall. However, while removal of the bulkhead is authorized, this permit does not authorize construction of the proposed vertical seawall. Based on the preceding discussion, the Commission finds the bulkhead has significant adverse impacts to public access. Should the applicant not remove the existing wooden bulkhead as proposed, resolution will occur through a separate enforcement action by the City of Carlsbad and/or the Commission.

Special Condition #6 requires the applicant to identify any locations which will be used as staging and storage areas for materials and equipment during the construction phase of this project. Use of public parking areas and the sandy beach, including on-street parking, for the interim storage of materials and equipment shall be avoided to ensure that public access and parking will not be affected.

In summary, the existing bulkhead adversely affects the public's ability to access the shoreline on site by its location on sandy beach historically used by the public, and, off-site, by virtue of its use as a reference point for the alignment of shoreline protection in the project area. Therefore, the Commission finds the proposal to remove the wooden bulkhead is not only consistent with the above policies of the Coastal Act and Carlsbad LCP, but it is mandated by them. Thus, as conditioned to ensure the proposed project will not adversely affect the public's ability to access the shoreline, the proposed project is consistent with the above policies of the Coastal Act and Carlsbad LCP.

5. Water Quality/Drainage. The proposed development is located along the Carlsbad shoreline. Chapter 15.12, "Stormwater Management And Discharge Control", of the certified Carlsbad Zoning Ordinance requires "Best Management Practices" (BMPs) to prevent or reduce to the maximum extent practicable (MEP) the discharge of pollutants directly or indirectly into waters of the United States. The purpose of the ordinance is to reduce pollutants in storm water discharges, including those pollutants taken up by storm water as it flows over urban areas (Urban runoff) to the maximum extent practicable and to reduce pollutants in storm water discharges in order to achieve applicable water quality objectives for surface waters in San Diego County. The intent of the ordinance is to protect and enhance the water quality of watercourses and wetlands in

a manner pursuant to and consistent with the Clean Water Act and California Regional Water Control Board NPDES Permit No. CA108758, Order 90-42 and any amendment or revision.

Policy 4-6 of the Mello II LUP, “Sediment Control” Practices, provides:

Apply sediment control practices as a perimeter protection to prevent off-site drainage. Preventing sediment from leaving the site should be accomplished by such methods as diversion ditches, sediment traps, vegetative filters and sediment basins. Preventing erosion is of course the most efficient way to control sediment runoff.

Section 21.204.050 of the Coastal Shoreline Development Overlay zone provides:

1) ...Building sites shall be graded to direct surface water away from the top of the bluff, or, alternatively, drainage shall be handled in a manner satisfactory to the City which will prevent damage to the bluff by surface and percolating water..

No excavation, grading or deposit of natural materials shall be permitted on the beach or the face of the bluff except to the extent necessary to accomplish construction pursuant to this section....

In its approval, the City found that the project must utilize best management practices to eliminate or reduce surface pollutants when planning any changes to the landscaping and surface improvements. However, the City’s permit does not specifically address the changes necessary to mitigate potential adverse impacts to water quality. The certified Stormwater Ordinance requires that both the quantity and quality of runoff be addressed to maintain water quality. While the City found that quantity would be addressed by collecting runoff in a proposed drainage system that uses drains, swales and an energy dissipater near the toe of the bluff, it failed to address the quality of the runoff as required in the ordinance. The Commission notes the project proposes greater amounts of impervious surfaces than the pre-existing project and for that reason quality of runoff must be addressed (i.e., increase in the discharge of pollutants).

The Mello II LCP provides that drainage should go to the street if feasible. The bulk of the drainage is being directed to Ocean Street; however, because of the sloping nature of the lot some runoff is proposed to be directed towards the beach. The certified LCP requires that best management practices be utilized to assure the quality of the water leaving the site has been addressed to the maximum extent practicable. No specific implementing water quality measures were approved. The Commission has found in previous permit decisions that directing on site runoff into landscaping/vegetation or another filtering medium (French drain) is an adequate measure to improve water quality. In this case the Commission finds a water quality plan must be submitted to ensure the required reduction in the discharge of pollutants. Special Condition #7 requires that runoff be directed towards the street to the extent feasible and that runoff that is directed towards the beach must be directed through landscaping or another filtering medium before runoff is discharged off-site. Any runoff directed to the beach shall be directed in

an non-erosive manner and through landscaping or another filtering medium as stated above, prior to discharge onto the beach. No energy dissipating structures shall be permitted on the beach seaward of the toe of bluff. Only as conditioned is the proposed project consistent with the above provisions of the certified LCP.

6. Public Views. The following policies and goals of the certified Mello II LCP address protection of public views and are applicable to the proposed development:

Policy 8-1

The Scenic Preservation Overlay Zone should be applied where necessary throughout the Carlsbad Coastal Zone to assure maintenance of existing views and panoramas. Sites considered for development should undergo individual review to determine if the proposed development will obstruct views or otherwise damage the visual beauty of the area. The Planning Commission should enforce appropriate height limitations and see-through construction, as well as minimize any alterations to topography.

In addition, Section 21.40.135 of the City's certified LCP Implementation Plan is applicable to the proposed development and states, in part:

Within the coastal zone, existing public views and panorama shall be maintained. Through the individualized review process, sites considered for development shall be conditioned so as to not obstruct or otherwise damage the visual beauty of the coastal zone. In addition to the above, height limitations and see-through construction techniques should be employed. Shoreline development shall be built in clusters to leave open areas around them to permit more frequent views of the shoreline. Vista points shall be incorporated as a part of larger projects.

Additionally, Section 21.204.100 (B & C) of the Coastal Shoreline Development Overlay Zone of the City's certified LCP is applicable and states:

- B. Appearance – Buildings and structures will be so located on the site as to create a generally attractive appearance and be agreeably related to surrounding development and the natural environment.
- C. Ocean Views – Buildings, structures, and landscaping will be so located as to preserve the degree feasible any ocean views as may be visible from the nearest public street.

The proposal includes construction of a two-story, 30-foot high, 6,358 sq. ft. single-family dwelling. The surrounding community is comprised of structures of similar size and scale to the proposed structure. The proposed residence meets all height and density requirements of the certified LCP and architecturally is in conformance with the development and design standards of the surrounding community. The City granted a variance from the front yard setback requirements (20 feet required, 0-foot setback approved). The setback allows more of the flat upper portion of the site to be used for

building rather than the steeper sloping portions of the lot which minimizes grading and landform alteration consistent with coastal resource preservation. The prevailing pattern of development along Ocean Avenue uses this approach and the City and Commission have approved it in many permit decisions.

Regarding the preservation of ocean views, as noted, the project, not including the seawall, is consistent with the stringline of development in the area and as such, new development will not adversely affect ocean views to and along the shoreline. The project proposes 5-foot side yard setbacks which if left unobstructed would provide view corridors from Ocean Street to the ocean. The applicant has revised the project to include open gates on the side yard areas. Special Condition #5 requires that any future improvements to the single family house authorized by this permit, including but not limited to the replacement of see-through fences with solid materials identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252, shall require an amendment from the Commission. The condition is being imposed because any change in the side yard, even if normally exempted from review by Section 30610, could render the project inconsistent with the LUP view policies.

The proposed landscaping plan includes several non-native and ornamental trees, shrubs and groundcover. Special Condition #8 requires a revised plan which indicates that only non-invasive and drought tolerant native plant materials can be used. Therefore, as conditioned to require that the side yards be maintained open and that the Commission review any future development proposals that could obstruct public views to the ocean, the Commission finds the project is consistent with the visual resource provisions of the certified LCP.

7. Unpermitted Development. Unpermitted development, consisting of a wooden bulkhead, has occurred on site without the required coastal development permit. The applicant has proposed to remove the unpermitted bulkhead with this application and replace it with the proposed vertical seawall. To ensure that the components of unpermitted development addressed by this application are resolved in a timely manner, Special Condition #13 requires that the applicant satisfy all conditions of this permit, which are prerequisite to the issuance of this permit within 60 days of Commission action, or within such additional time as the Executive Director may grant for good cause. However, while removal of the existing unpermitted bulkhead is authorized, this permit does not authorize construction of the proposed new vertical seawall. Further, should the applicant not remove the existing unpermitted wooden bulkhead as proposed, resolution may occur through a separate enforcement action by the City of Carlsbad. The Commission's enforcement division will also evaluate further actions to address this matter.

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an

admission as to the legality of any development undertaken on the subject site without a coastal permit.

8. Local Coastal Planning. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Commission prepared and approved two portions of the Carlsbad LCP, the Mello I and II segments in 1980 and 1981. However, the City of Carlsbad found several provisions of the Mello I and Mello II segments unacceptable and, therefore, did not adopt the LCP until 1997. In the intervening period, the Coastal Act was amended to include Section 30519.1 which specifies that for projects within the jurisdiction of the Mello I and Mello II segments of the LCP, coastal development permit applications are to be reviewed for their consistency with the certified local coastal program.

The certified Carlsbad LCP Mello II segment contains in its Implementation Program, a Coastal Development (C-D) Overlay Zone, which has been discussed in this report. The purpose of the C-D zone is, among other purposes, to provide regulations for development and land uses along the coastline in order to maintain the shoreline as a unique recreational and scenic resource, affording public safety and access, and to avoid the adverse geologic and economic effects of bluff erosion.

The ordinances of the C-D Overlay contain detailed regulations regarding the construction of revetments, seawalls, cliff-retaining walls, and other similar shoreline structures. Specifically, the ordinance allow for the construction of seawalls only when they are required in order to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion. As noted, in this case, because the proposed project has been found to be feasible without the need for a seawall, the Commission finds that, as conditioned, the project is consistent with the City's C-D Overlay Zone and certified Local Coastal Program. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the ability of the City to continue implementation of its certified LCP.

9. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit or amendment to be supported by a finding showing the permit or permit amendment, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project, as conditioned, is consistent with the visual, public access and hazard policies of the Carlsbad LCP. Mitigation measures will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the

least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.